HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.7974 of 2001

Dated 19th day of June, 2007

Between:

Mantena Kishore Babu .. Petitioner

And

The Agent to the Government/
District Collector,
West Godavari, Eluru
and two others .. Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the Proceedings in S.R.Nos.97/92 and 46/93 dated 26.8.1993 issued by the 2nd respondent-Special Deputy Collector, which were confirmed by the 1st respondent-Agent to the Government in his Proceedings dated 14.2.2001, as arbitrary and illegal.

The petitioner asserts that his father purchased a total extent of Ac.18.27 cents of land in various survey numbers situated in Kamayyapalem village, Jeelugumilli Mandal, West Godavari District from non-tribals by virtue of various registered sale deeds dated 14.6.1963, 19.7.1963 and 19.8.1963 and since then, the petitioner has been in possession and enjoyment of it. When the Special Deputy Tahasildar (Tribal Welfare), K.R.Puram filed a complaint under Section 3(2)(a) of the A.P.Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation I of 1970 (for brevity "A.P.S.A.L.T. Regulation"), the 2nd respondent-Special Deputy Collector, after examining the evidence of the petitioner and records, held that the entire land is under the possession of the non-tribals and there is no violation of the provisions of A.P.S.A.L.T. Regulation and disallowed the claim by his order dated 23.4.1990. Now, the grievance nurtured by the petitioner is that against the order, dated 23.4.1990, the Special Deputy Tahasildar, without exhausting the remedy of appeal, filed another complaint before the 2nd respondent, who without having any power to review the earlier order, reopened the matter and allowed the claim passing an order of ejection on 26.8.1993. Further, when the petitioner preferred an appeal against the order dated 26.8.1993, the

1st respondent dismissed it by his order dated 14.2.2001 on the ground that the petitioner's father purchased the entire schedule land without obtaining prior permission from the competent authority.

In spite of the fact that notices were served on the respondents, they have not chosen to file their counter affidavit.

Heard the learned counsel for both the parties and perused the material placed on record.

It is the contention of the learned counsel for the petitioner that on the basis of the complaint filed by the Special Deputy Tahasildar under Section 3(2)(a) of A.P.S.A.L.T. Regulation, the Special Deputy Collector, by his order dated 23.4.1990, disallowed the claim. When once the claim filed by the Special Deputy Tahasildar was disallowed, the Special Deputy Tahasildar ought not to have made a further complaint and the Special Deputy Collector ought not to have passed the order dated 26.8.1993.

Following the judgment in **Chintalapati Ramalinga Raju Vs. District Collector, Eluru, West Godavari District**[1], this Court disposed of several writ petitions holding that the authorities have no power to review the order passed under the A.P.S.A.L.T. Regulation, and thus allowed those writ petitions. The Special Deputy Collector, in his order dated 23.4.1990, clearly stated that Exs.R1 to R6, which are various copies of sale deeds, establish that the schedule lands were purchased by the parents of the petitioner during 1963 i.e. before Regulation I of 1970 came into force and the transfers were between non-tribals. He also observed that from a perusal of Exs.R7 and R8, which are the extracts from SSR of 1902 and RSR of 1933, the lands were never held by tribals and they were under the possession and enjoyment of the petitioner only who inherited the same from his parents. When once the Special Deputy Collector had given such a finding in the year 1990 it is not known how again he initiated the

Proceedings dated 26.8.1993 under Section 3(2)(a) of the A.P.S.A.L.T. Regulation. The appellate authority also did not look into this aspect and passed a cryptic order. Of course, it is the contention of the learned Government Pleader that in spite of the fact that the petitioner received notice he was intentionally absent before the 2nd respondent-Special Deputy Collector who had no occasion to know the fact that on an earlier occasion, the then Special Deputy Collector passed an order on 23.4.1990 in favour of the petitioner. It is true that the petitioner was absent, but it is the same office which passed the order in the year 1990 and it is not as though the order dated 23.4.1990 was passed long back, and thus, the 2nd respondent-Special Deputy Collector, who passed the order dated 26.8.1993, is not aware of the earlier Proceedings dated 23.4.1990.

In the light of the above discussion and also having regard to the fact that repeated enquiries are not permissible as observed in the above cited judgment, this Court is of the view that the order dated 26.8.1993 which was confirmed by the 1st respondent-Agent to the Government, is clearly without jurisdiction, and accordingly the same is liable to be set aside.

In the result, the writ petition is allowed setting aside the order, dated 26.8.1993 passed by the 2nd respondent-Special Deputy Collector. No costs.

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19.06.2007

bcj

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[1] 200(4) ALD 443